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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,385	02/24/2004	Alan J. Wheatley	21475.NP	2883

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EXAMINER

HOGAN, JAMES SEAN

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/786,385	Applicant(s) WHEATLEY ET AL. <i>W</i>	
	Examiner James S Hogan	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 52-59 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 16-18, 21, 22, 27, 28, 30-34, 37-39, 41-45 and 49-51 is/are rejected.
- 7) ☒ Claim(s) 10, 12-15, 19, 20, 23-26, 35, 36, 40 and 46-48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/24/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show reference to a part from an earlier cited drawing. Figure 4, a purported cross-section to Figure 1, should make reference to item 58, the barrier, as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

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2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-2,8-9,11,17 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,019,434 to Matsumoto.

Regarding claims 1-2, Matsumoto ('434) discloses a solid air freshener wherein the body is made of an elastomeric polymer, in this case ethylene-vinyl-acetate copolymer (as per claim 9), where a scent material (liquid perfume), is interspersed within the body, capable of diffusing scent to surrounding air. As per claim 2, the solid composition is capable of being a freestanding, self-supported, 3-dimensional shape (claim 6-9). As per claim 17, the scent material in the polymer body disperses a substantially constant rate between two and thirty days (see Fig 1). As per claim 8, the glass transition temperature of ethylene-vinyl-acetate is greater than 110°. As per claim 10, by definition, ethylene-vinyl-acetate is a thermoplastic elastomer.

Claim 21, 22, 33 and 34 rejected under 35 U.S.C. 103(a) as being anticipated by U.S. Patent No. 5,019,434 to Matsumoto.

Disclosed by Matsumoto is and air freshener device comprised of a thermoplastic elastomer (ethylene-vinyl-acetate) having a freestanding, 3-dimensional, self-supported shape and a scent material interspersed within the elastomer. As per claim 22, the glass transition temperature of ethylene-vinyl-acetate is greater than 110°. As per claim

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33, the scent material in the polymer body disperses a substantially constant rate between two and thirty days (see Fig 1). As per claim 34, ethylene-vinyl-acetate has an opaque appearance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3,4,6,7,27,28,30,31, rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,019,434 to Matsumoto in view of U.S. Patent No. 5,638,249 to Wheatley et al.

The rejection of claims 1-2,8-9,11,17 above stands as the basis for the following. Matsumoto ('434) does not teach a pad carrying the body, having a tacky attachment surface. Wheatley et al. ('249) teaches the use of tacky pads for removable attaching items. The pad of Wheatley can be configured to contact and cling to a body, can conform to the shape of a support surface, and can contain indicia within its makeup. It would have been obvious to one skilled in the art to combine the pad of Wheatley with the air freshener of Matsumoto in order to provide an air-freshener with the ability to adhere to surfaces, as in a motor vehicle.

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Claim 32, rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,019,434 to Matsumoto in view of U.S. Design Patent No. D404,957 to Cheris et al.

The rejection of claim 21 above stands as the basis of the following. Matsumoto ('434) does not teach a plurality of indentations or protrusions formed within a thermoplastic elastomer. The device of Cheris et al., while not an air freshener teaches a formed device with indentations and protrusions. It would have been obvious at the time the invention was made to have formed a configuration of indentations or protrusions in order to facilitate the air-freshener to act as a holder of various other items.

Claim 37,38,39,41,42,43,44,45,49,50,51 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,019,434 to Matsumoto as modified by U.S. Patent No. 5,638,249 to Wheatley et al.

Matsumoto ('343) teaches a solid air freshener wherein the body is made of an elastomeric polymer, in this case ethylene-vinyl-acetate, where a scent material (liquid perfume), is interspersed within the body, capable of diffusing scent to surrounding air. Wheatley et al. ('249) discloses a tacky attachment surface configured to adhere to a support surface. As per claim 38, the attachment surface of Wheatley ('249) clings by specific adhesion, in this case electrostatic adhesion, and can (as per claim 41), deform to conform to a shape of a support surface. As for claim 42 and 51, the attachment surface material used is also capable of having indicia. As for the material of the polymer, ethylene-vinyl-acetate in its raw form is opaque, therefore being light

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transmissive. As per claim 43 and 44, ethylene-vinyl-acetate's glass transition temperature is above 110°, and it is classified as a thermoplastic elastomer. As per claim 50, the scent material in the polymer body of Matsumoto ('434) disperses a substantially constant rate between two and thirty days (see Fig 1). It would have been obvious to one skilled in the art to combine the pad us Wheatley with the air freshener of Matsumoto in order to provide an air-freshener with the ability to adhere to surfaces, as in a motor vehicle, and to have light transmissive qualities so as to be provide in a myriad of colors.

Claim 49 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,019,434 to Matsumoto as modified by U.S. Patent No. 5,638,249 to Wheatley et al. as described above and further modified by U.S. Design Patent No. D404,957 to Cheris et al.

Neither Matsumoto ('434) nor Wheatley ('249) teaches a plurality of indentations or protrusions formed within a thermoplastic elastomer. The device of Cheris et al., while not an air freshener, teaches a formed device with indentations and protrusions. It would have been obvious at the time the invention was made to have formed an air freshener configuration of indentations or protrusions in order to facilitate the air-freshener to act as a holder of various other items.

Allowable Subject Matter

4. Claims 52-59 allowed.

Claims 10, 12-15, 19, 20, 23-26, 35, 36, 40, and 46-48 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows.

- . U.S. Patent No. 5,820,791 to Canale, disclosing an air treatment device
- U.S. Patent No. 3,941,858 to Shepherd et al, disclosing hydrophilic polymers
- U.S. Patent No. 6,375,966 to Maleeny et al., disclosing polyurethane/polyurea matrices
- U.S. Patent No. 5,638,249 to Rubino et al., disclosing an electrostatic support system
- U.S. Patent No. 5,780,527 to O'Leary disclosing a perfuming device
- U.S. Patent No. 5,861,128 to Vick et al. disclosing an air-freshener device.

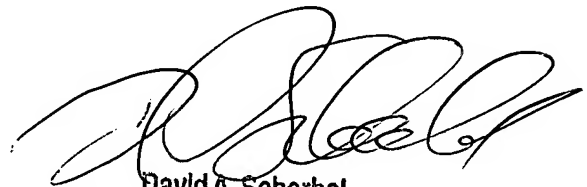
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH
02/18/2005



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